

Navigating Legal Ambiguity in Land Rights Transition

Septa Hanum Khairiyah^{1*}, Arifki Budia Warman¹, Dewi Putri¹, Alfi Husni¹, Nurhikma¹

¹ Universitas Islam Negeri Mahmud Yunus Batusangkar

Correspondence:

septahanumkhairiyah@gmail.com

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Abstract: This study explores the legal and administrative challenges in the conversion of Building Use Rights (HGB) to Ownership Rights (HM) at the National Land Agency (BPN) Office of Solok Regency, with specific focus on the Green Hills Arya housing complex in Tanjung Bingkung. Employing a qualitative field research approach, data were collected through interviews with BPN officials, affected residents, and local authorities. The research identifies multiple barriers to the HGB-to-HM conversion, including jurisdictional conflicts following administrative boundary changes, poor coordination between Solok Regency and Solok City BPN offices, and delays caused by the outdated digital infrastructure required under Ministerial Regulation ATR/BPN No. 3/2023 on Electronic Land Certificates. Technical errors and unresolved document transfers have resulted in 76 pending land archives. From both Indonesian positive law and Islamic legal perspectives, the conversion process aligns with core principles of legality, justice, and public benefit, reinforcing the necessity for equitable and efficient land administration. The study underscores the urgent need for improved legal clarity, institutional coordination, and technological readiness to uphold the principle of equality in property rights management.

Keywords: Land Rights Transition, Legal Certainty, Islamic Law

Introduction

The rapid population growth in Solok Regency has led to a significant increase in housing demand. To meet this need, housing development has been undertaken by various actors, including the government, private sector, and community-based initiatives. While the government typically focuses on providing housing for low-income groups, private developers cater to broader market segments through commercial homeownership schemes. A common model employed is the Mortgage Ownership Scheme (*Kredit Pemilikan Rumah* or KPR), which involves a tripartite arrangement between developers, banking institutions, and consumers. In this arrangement, land and building certificates serve as collateral, with the legal status of the land – initially designated as Building Use Rights (*Hak Guna Bangunan* or HGB) – eligible for conversion into Ownership Rights (*Sertifikat Hak Milik* or SHM) upon full repayment, in accordance with prevailing regulations.

However, in practice, the process of converting HGB to SHM often encounters administrative challenges. This issue is particularly evident in the Green Hills Arya residential complex in Solok Regency, where residents face difficulties in processing their land title upgrades due to jurisdictional ambiguities between the Solok Regency and Solok City offices of the National Land Agency (BPN). Residents report

conflicting responses from both offices regarding which institution holds the authority to process their applications. For instance, one resident stated that her application was rejected by the Solok Regency BPN office on the grounds of lacking jurisdiction, only to be informed by the Solok City BPN office that the area did not fall under their responsibility either. This jurisdictional overlap has created significant legal uncertainty for residents attempting to secure their property rights.

Previous studies have addressed the conversion of HGB to SHM from various angles, including the legal framework and procedural mechanisms. Research has highlighted key challenges such as administrative inefficiencies and a general lack of public understanding regarding land regulations. While these studies provide valuable insights, few have investigated the specific case of the Green Hills Arya housing complex. This study seeks to fill that gap by analyzing the practical implementation of HGB-to-SHM conversions in this location, viewed through the lenses of both Indonesian positive law and Islamic legal principles.

Literature Review

Building Use Rights (*Hak Guna Bangunan*)

Building Use Rights (HGB) are a form of land tenure recognized under Indonesian law that allows individuals or legal entities to construct and possess buildings on land they do not own. (Arimbawa et al., 2023) Article 35 of the Basic Agrarian Law (UUPA) stipulates that HGB may be granted for a maximum of 30 years and extended for an additional 20 years upon request. Article 37 explains that this right may apply to state-owned or privately owned land, enabling the holder to build, use, and benefit from the property within the permitted duration. (Susilawati, 2024) Furthermore, HGB can be transferred to other parties or used as collateral in financial agreements through the establishment of a mortgage (*Hak Tanggungan*). (Chandera Halim & Vincentius Patria Setyawan, 2024)

The General Elucidation of the UUPA requires HGB holders to obtain permission from the land management rights holder (*Hak Pengelolaan*, HPL). (Calista & Djaja, 2024) Land with HPL status can be utilized as credit collateral by creating a security right through an official deed (*Akta Pembebanan Hak Tanggungan*) executed before a Land Deed Official (PPAT) in the presence of both debtor and creditor. HGB differs from Ownership Rights in terms of tenure, as it is relatively shorter and depends on the needs and conditions of the buildings developed on the land. (Mulyano et al., 2020)

The legal basis for HGB is found in several key regulations. Law No. 5 of 1960 on Basic Agrarian Principles outlines the fundamental provisions, including the duration, eligibility, and transferability of the right. Government Regulation No. 40 of 1966 provides more detailed procedures for Building Use Rights, alongside regulations on Cultivation and Usage Rights. More recently, Government Regulation No. 18 of 2021 introduces reforms regarding land registration and rights management, reinforcing legal certainty and supporting land development practices in Indonesia.

Ownership Rights

Ownership Rights (*Hak Milik*) represent the most complete and permanent form of land tenure under Indonesian agrarian law. (Rafiqi et al., 2021) These rights entail full authority over land, allowing the holder to utilize, transfer, or register the property legally. Enhancing land status often involves legal transformation through exchange, transfer, or re-registration, all of which must be officially recorded in the land registry. Ownership Rights are a fundamental and enduring component of Indonesia's land rights structure, valid for as long as the Basic Agrarian Law (UUPA) remains in force and conferred solely by the state. (Ismail & Rahaditya, 2023)

Ownership Rights are recognized through official land deeds and registration certificates. (Mutia Dewi & Farma Rahayu, 2024) Government Regulation No. 24 of 1997 emphasizes that

registration is essential for legal security and administrative certainty. A land ownership certificate serves as conclusive proof of legal title, enhancing legal protection and enabling access to credit, as it provides assurance to financial institutions. For the state, the certificate confirms the land's legal status and inclusion in the national land administration system. (Arfa et al., 2024)

The legal foundation for Ownership Rights is primarily outlined in Law No. 5 of 1960 on Basic Agrarian Principles (Articles 20–27), which describes these rights as hereditary, strongest, and fullest. Ownership is reserved exclusively for Indonesian citizens and certain legal entities, and may only be acquired through customary law or government decree. For legal certainty, any transfer, cancellation, or encumbrance of Ownership Rights must be registered. Ownership Rights are transferable under specific legal conditions. Owners have the authority to transfer property to others; however, transfers to foreign individuals or unauthorized entities are prohibited and will render the transaction void, returning the land to state ownership. The legal mechanisms through which Ownership Rights may be transferred, including sale, exchange, grant, inheritance, and incorporation as company assets. (Aslan Noor et al., 2019) Government Regulation No. 24 of 1997 codifies these procedures to ensure uniformity and legal compliance in land transactions across Indonesia.

Ministerial Regulation of ATR/BPN No. 18 of 2021

The Ministerial Regulation of the Agrarian and Spatial Planning Agency/National Land Agency (ATR/BPN) of the Republic of Indonesia No. 18 of 2021 governs the procedures for determining land management rights and other land rights. (Laksono et al., 2025) This regulation outlines the process for submitting applications for land management rights or specific land rights, as stipulated in Articles 23 to 28. Article 23 stipulates that applications may be submitted to the land office or regional office in accordance with the authorized jurisdiction. Applications for Ownership Rights (*Hak Milik*), Building Use Rights (*Hak Guna Bangunan*), Right of Use (*Hak Pakai*), and Cultivation Rights (*Hak Guna Usaha*) within the authority of local land offices are to be submitted to the relevant head of the land office. For Cultivation Rights falling under the jurisdiction of regional or ministerial authority, applications must be directed to the corresponding regional office. All submitted documents must be original or certified copies. Additionally, applications for land management and land rights must include planning documents that outline land use, allocation, and utilization, except in cases involving Ownership Rights or subordinate rights over management land. If land parcels are split in a way that alters jurisdictional authority, responsible officials may be subject to sanctions under prevailing regulations.

Article 24 introduces the option for electronic submission of applications through a digital system provided by ATR/BPN, including access to submitted documents. Article 25 emphasizes that applicants bear full civil and criminal responsibility for the validity and material truth of their documents. Article 26 describes the stages of document verification. Upon receipt, a designated officer will review the application for completeness. Extensions of land rights can only be processed if the original right has not yet expired. If deficiencies are found, applicants will be given the opportunity to complete their submissions. Once all requirements are fulfilled, applicants will receive a receipt and a billing statement for non-tax state revenue in accordance with applicable regulations. (Situmorang & Al-Afgani, 2023) Article 27 states that upon verification and completion of payment, a land survey will be conducted by the authorized personnel. Article 28 lists the required attachments for applications, including a land acquisition list and map, the application form, land use planning documents, a cover letter, a statement of physical land control, and a checklist of supporting documents. This regulation aims to ensure a clear, transparent, and accountable process for the acquisition and administration of land rights, thereby enhancing legal certainty for applicants in line with Indonesia's regulatory framework.

Ownership in Islamic Law

Ownership in Islamic jurisprudence (*al-milkiyyah*) refers to the legal relationship between an individual and property as established by sharia, where a person may control, utilize, and benefit from property that is acquired through lawful means, so long as it does not contradict religious principles. (Taqiyuddin et al., 2023) Islam affirms that ultimate ownership belongs to God, as stated in Surah Al-Ma'idah [5:120], indicating that the sovereignty of all things in the heavens and on earth rests with Allah. Humans, therefore, are not absolute owners but are entrusted as stewards (*khalifah*) responsible for managing wealth with justice and accountability. This stewardship includes obligations such as paying zakat and engaging in charitable activities to ensure social welfare.

The Islamic conception of ownership emphasizes the social function of property. (Saputro et al., 2024) Land and natural resources must be utilized to benefit the broader society. Neglected or unproductive land, for example, may be subject to redistribution to those who will make productive use of it, reinforcing Islam's commitment to equitable and efficient use of property. Islam also guarantees the protection of private ownership rights and prohibits acts such as theft and unlawful seizure. This is emphasized in the Qur'anic verse Al-Ma'idah [5:38], which prescribes penalties for theft as a means of safeguarding property rights and maintaining justice in society.

From a legal perspective, ownership in Islam is recognized through several legitimate mechanisms, including acquisition of unowned property (*ihraz al-mubahat*), contractual agreements (*al-'uqud*) such as sales, gifts, and bequests, as well as through inheritance (*al-khalafiyah*) or derivation from owned assets (*al-tawallud min al-mamluk*) (Marasabessy, 2023), such as livestock yielding milk. Islamic law also categorizes ownership based on the nature of control and the type of benefit derived. Ownership may be private, public, or state-based, depending on the intended use and management of the property. Private ownership refers to assets held by individuals, such as homes and personal land. Public ownership applies to assets used communally, like roads and rivers. State ownership pertains to property administered by the government for the public good. Additionally, ownership can be full, encompassing both substance and utility (*al-milk at-tām*), or limited, where only the benefits of an asset are possessed, such as in lease agreements (*al-milk al-qāṣir*).

Through this multifaceted structure, Islamic legal tradition seeks to harmonize individual property rights with collective responsibilities, embedding ownership within a broader ethical and social framework that aligns with the objectives of Islamic law (*maqāṣid al-shari'ah*) (Nabilah, 2021), particularly the promotion of justice, equity, and communal welfare. (Rizal et al., 2023)

The Concept and Classification of Maslahah Mursalah in Islamic Legal Theory

In Islamic legal theory, maslahah generally denotes benefit or welfare, while maslahah mursalah refers to a form of public interest that is not explicitly addressed in scriptural texts – either by affirmation or rejection. (Afif Noor et al., 2025) Maslahah mursalah encompasses benefits obtained either directly or indirectly, including enjoyment or protection from harm, which the shari'ah neither explicitly prescribes nor prohibits. (A. Zaenurrosyid et al., 2024) Despite the absence of specific textual evidence, this concept is widely employed in Islamic jurisprudence to support rulings that align with the overarching objectives of Islamic law (*maqāṣid al-shari'ah*). (Octavia et al., 2023)

Islamic scholars have used various terminologies to refer to this principle, such as *al-munāsib al-mursal* and *al-istidlāl al-mursal*, all of which serve a common purpose; the formulation of legal rulings based on general principles of public interest. Any legal ruling grounded in maslahah may be examined from three perspectives. *First*, maslahah in concrete legal cases refers to practices such as the issuance of marriage certificates, which, while not explicitly commanded in scripture, are recognized as essential for protecting lineage and administrative clarity. *Second*, *al-wasf al-munāsib*, or legal alignment with shari'ah objectives, indicates that any provision consistent with the aims of

Islamic law—such as the protection of lineage—is considered valid even in the absence of specific textual support. *Third, istislāh*, or jurisprudential reasoning based on public interest, provides a methodological foundation for incorporating unregulated but beneficial practices into Islamic legal rulings.

Despite differing opinions among jurists regarding the admissibility of *maslahah mursalah*, there is consensus that any benefit aligned with the general aims of *shari'ah* may serve as a valid source of law, provided it does not contradict established principles. In terms of classification, *maslahah* is categorized along two axes. Based on its significance, scholars identify three levels: *maslahah al-ḍarūriyyah* (essential interests), which preserve fundamental values such as religion, life, intellect, progeny, and property; *maslahah al-hājiyyah* (complementary interests), which address necessary needs and include legal concessions such as shortened prayers for travelers; and *maslahah al-tahsīniyyah* (embellishing interests), which promote moral and social refinement, such as encouraging healthy dietary habits. (Nabilah & Hayah, 2022)

From the standpoint of scope, *maslahah* may be classified as either general ('āmmah) or specific (*khāṣṣah*). The former addresses collective welfare, such as policies designed to protect societal faith from deviant ideologies, while the latter pertains to individual circumstances, such as the dissolution of a marriage in the case of a spouse declared missing (*maqfūd*). Thus, *maslahah mursalah* serves as a flexible yet principled tool in Islamic legal reasoning, allowing jurists to accommodate new and evolving social realities in the absence of explicit textual guidance, while remaining faithful to the broader objectives of *shari'ah*.

Method

This study employs a qualitative field research approach, focusing on the legal analysis and empirical documentation of real-life events occurring within society. Specifically, the research investigates the legal process of transferring Building Use Rights (Hak Guna Bangunan, HGB) to Ownership Rights (Hak Milik, HM) as practiced at the Land Office (BPN) of Solok Regency, particularly within the Green Hills Arya residential complex in Tanjung Bingkung, Solok Regency. The research adopts a descriptive qualitative design aimed at producing both written and oral descriptive data derived from individuals directly involved in, or affected by, the observed legal processes. Through this methodology, the study seeks to capture the procedural dynamics, institutional interactions, and lived experiences surrounding the implementation of land rights conversion in the selected field context.

Results and Discussion

The Practice of Transferring Building Use Rights (HGB) to Ownership Rights (HM) Based on Field Findings at the Land Office (BPN) of Solok Regency

The process of upgrading land tenure status from Building Use Rights (HGB) to Ownership Rights (HM), commonly referred to as land rights conversion, is a standard administrative mechanism at the Land Office (BPN) of Solok Regency. This legal transformation allows individuals or legal entities holding HGB to convert their land status into full ownership, i.e., HM. According to Article 23(1)(a) of the Ministerial Regulation ATR/BPN No. 18 of 2021, such conversions fall under the authority of the land office with jurisdiction over the parcel in question. As Green Hills Arya Housing is located in Tanjung Bingkung, Solok Regency, the process should fall under the mandate of the Solok Regency Land Office. However, in practice, residents' applications were rejected due to administrative boundary disputes between Solok Regency and Solok City.

An interview conducted on December 18, 2024, with Afifa Nailannaja, S.H., a Land Affairs Officer at the Solok Regency BPN, revealed that part of the housing area had been proposed for reclassification into Solok City by the developer, PT. Arda Jaya, in late 2023. Coordinate mapping revealed that the land now straddles two jurisdictions—some parcels fall within Solok Regency, while others fall within Solok

City—thus triggering jurisdictional ambiguity and disrupting the administrative flow for land conversion applications. Although the Solok BPN had not outright rejected the applications, they were temporarily suspended pending re-measurement and inter-office coordination. A subsequent agreement allowed documents to be initially submitted to the Solok Regency BPN, which would then forward them to Solok City BPN for the issuance of electronic ownership certificates (e-SHM). The required documents included an application letter, copies of national ID and family cards, power of attorney (if applicable), the latest land and building tax (SPPT PBB) receipt, building permit (IMB), and creditor consent if the land had been used as mortgage collateral.

The standard procedure begins with document verification, followed by physical inspections and coordinate confirmation. Upon completion, HM certificates are typically issued within a week. However, a significant obstacle arose with the implementation of electronic land certification in 2024. Plots previously bound by mortgage rights that had been discharged (roya) were automatically converted into electronic certificates. As the national application for cross-jurisdictional processing of e-certificates remains under development, HM certificates for such plots remain pending. As of June 2024, residents whose properties were previously under mortgage rights have experienced prolonged delays.

An interview with the village head of Tanjung Bingkung, Mr. Mardanus, confirmed that the Green Hills Arya land originally belonged to the Caniago tribe and was later purchased by the developer. He affirmed that no official request had been filed for administrative reclassification to Solok City, and the village government continues to manage property tax collection. Testimonies from six residents reveal confusion and procedural ambiguity. Some residents were redirected to Solok City BPN only to be informed that the original land documents remained with Solok Regency BPN, thereby prolonging their wait for certificate issuance. Many applicants who submitted requests as early as 2023 still await formal documentation by the end of 2024. In conclusion, the conversion process from HGB to HM in Green Hills Arya Housing faces administrative challenges, primarily due to overlapping jurisdictional authority between Solok Regency and Solok City BPN offices, compounded by incomplete implementation of the electronic certificate system. These issues have resulted in legal uncertainty and delays for residents seeking land ownership security.

Impacts of the Transition from Building Use Rights (HGB) to Ownership Rights (HM) at the National Land Agency (BPN) of Solok Regency

The policy transition from Building Use Rights (HGB) to Ownership Rights (HM) in the Green Hills Arya housing complex, located in Tanjung Bingkung, Solok Regency, has produced several notable consequences. Field interviews with officials at the Solok Regency Land Office (BPN) indicate that this transition was not regulated through formal written provisions but was instead based on an informal mutual understanding between the BPN offices of Solok Regency and Solok City. As this situation marks a precedent, the absence of an official Standard Operating Procedure (SOP) has led to inconsistencies in document handling and administrative coordination.

One of the most significant impacts of this informal policy is the procedural bottleneck in transferring physical land documents (warkah) from BPN Solok Regency to BPN Solok City via an internal digital platform. Unfortunately, the software system designated for this transfer has not yet been updated to accommodate inter-agency transfers, causing substantial delays. As a result, 76 land archives remain in limbo at the roya stage (the legal removal of mortgage encumbrances), despite mortgages having been fully repaid. The stagnation in document movement has left many residents unable to finalize their HM certificates within a reasonable timeframe.

In addition to system-related barriers, administrative errors such as incorrect data entries—particularly in names and document numbers—have further compounded delays. Erroneous records must be returned by BPN Solok City to the originating BPN Solok Regency for correction before they can be reprocessed, resulting in further postponements of HM certificate issuance that, in some cases, span several months. The absence of a clearly articulated, formal regulatory framework for managing such jurisdictional transitions has directly contributed to both legal uncertainty and bureaucratic inefficiency.

These challenges have had a tangible effect on the Green Hills Arya residents, whose efforts to obtain legal certainty over their land rights have been severely impeded.

The Conversion of Building Use Rights to Ownership Rights: A Comparative Analysis from the Perspective of Indonesian Positive Law and Islamic Law

This study reveals that the legal transition of land rights in Green Hills Arya Housing, Tanjung Bingkung, Solok Regency, is complicated by overlapping administrative jurisdictions. Initially falling under the authority of Solok Regency, the housing area was later incorporated into Solok City's administrative domain following regional boundary adjustments. Consequently, the Solok Regency Land Office (BPN) rejected applications to convert Building Use Rights (HGB) to Ownership Rights (SHM), despite the housing site previously being within its service scope. At the same time, Solok City Land Office (BPN) also refused the files, citing a lack of jurisdiction.

According to Ministry of Home Affairs Regulation No. 41 of 2013 concerning the administrative boundaries between Solok City and Solok Regency, Green Hills Arya is officially under the jurisdiction of Solok City. However, both land offices remained unaware of the redefined administrative boundaries until re-mapping procedures were undertaken during the application process. This institutional unawareness and lack of inter-agency coordination resulted in legal uncertainty and procedural delays, adversely affecting the residents. In light of Ministerial Regulation of ATR/BPN No. 18 of 2021 Article 23(1)(a), land affairs must be handled by the land office whose jurisdiction covers the location in question. The rejection by BPN Solok City therefore contradicts existing legal provisions, highlighting a lack of regulatory awareness and procedural consistency.

Furthermore, the enactment of ATR/BPN Regulation No. 13 of 2023 on Electronic Documents, effective from July 1, 2024, introduced new technical obstacles. The required digital platform to facilitate document transfers between land offices remains underdeveloped. Consequently, the transition of land archives is severely hindered, especially for parcels previously bound by mortgage (*Hak Tanggungan*) obligations. The technical infrastructure's limitations have further delayed the issuance of SHM certificates. In addition to technological setbacks, clerical errors in official documentation (such as name misspellings or incorrect file numbers) have also caused delays. These errors necessitate repeated file transfers between agencies for correction, reflecting insufficient verification procedures and the absence of a standardized administrative protocol (SOP). To alleviate the bureaucratic burden, BPN Solok Regency exempted residents from submitting individual transfer requests, considering the collective application submitted by the property developer. This measure, while administratively efficient, reflects the office's ad hoc approach to managing systemic legal and technical constraints.

Islamic jurisprudence (fiqh) provides a normative framework for analyzing property transitions, including the conversion of HGB to SHM. While this specific transition is not explicitly addressed in Islamic legal texts, it may be understood through the principle of maslahah mursalah – public interest reasoning not directly supported or contradicted by scriptural evidence but aligned with the objectives of Sharia (*maqashid al-shariah*). Building Use Rights (HGB) may be analogized in Islamic law to usufruct rights (*haq al-intifa'*), wherein individuals hold the right to benefit from land for a fixed period. Upon conversion to Ownership Rights (SHM), full proprietary rights (*milkiiyah tam*) are acquired, provided that the process adheres to the principles of lawful acquisition and does not harm others.

Islamic legal ethics require that such transfers be conducted in accordance with justice and mutual consent, as articulated in the legal maxim "*al-aslu fi al-'uqud al-ridha'*" (the default in contracts is mutual consent). Coercion, fraud, or information asymmetry would render a contract invalid. Furthermore, the prohibition of harm (*la darar wa la dirar*) reinforces the necessity of ensuring that land transfers do not harm the community or individuals. Unutilized or misused land, especially when it impedes social welfare, justifies its reassignment to more responsible parties, in line with the maxim "*yuzal al-darar*" (harm must be eliminated). Administrative flexibility is also valued in Islamic law under the principle "*al-masyaqah tajlib al-taysir*" (hardship begets ease). Where procedural complexity obstructs public welfare,

simplification is warranted. The collective application approach taken by BPN aligns with this principle by minimizing bureaucratic burden on residents. Ultimately, the conversion of HGB to SHM offers legal certainty and enhances property utility, fulfilling the Sharia objective of preserving wealth (hifz al-mal). Provided that outstanding debts or disputes are resolved, such transitions not only comply with Indonesia's statutory framework but also embody Islamic values of justice, transparency, and public welfare.

Conclusion

Based on the findings of this study, it can be concluded that the process of converting Building Use Rights (HGB) into Ownership Rights (SHM) at Green Hills Arya Housing Complex in Solok Regency faces a number of administrative and technical challenges. The primary obstacle stems from jurisdictional inconsistencies between the Solok Regency and Solok City Land Offices (BPN), caused by a shift in administrative boundaries. This situation has resulted in institutional confusion and the inability of both offices to process ownership conversion requests effectively. Furthermore, the implementation of electronic land certificates has not been fully optimized, while the absence of a formal standard operating procedure (SOP) has exacerbated bureaucratic complexity, leading to prolonged delays in the issuance of land ownership certificates for residents.

The conversion policy, which is based merely on verbal agreements between agencies without any written legal framework, has generated legal uncertainty and inefficiencies in land administration services. Technical obstacles, such as the outdated digital application system for transferring land documents and recurrent clerical errors, further extend the processing time. From a legal perspective, this ownership conversion process is legitimate under both Indonesian positive law and Islamic law, provided it is conducted fairly, transparently, and without harm to any involved party. Both legal systems emphasize the importance of clear and lawful land ownership as a means of protecting property rights and ensuring the public interest (maslahah).

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Conflict of Interest

This article has no conflicts of interest.

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